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1 November 1993

William F Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street NW
Washington DC
20554

File
RM-8355

Dear Mr Caton,

1. We have seen AT&T's petition for rulemaking (PFRM) of 22 September in relation to "Market Entry and Regulation of International Common Carriers with Foreign Carrier Affiliations. This letter sets out the views of the British government and is for the public record.

2. The FCC is well aware from our previous submissions of the UK policy set out in the 1991 White Paper, "Competition and Choice: Telecommunications Policy for the 1990s". Our policy remains one of minimising the regulatory burden to be placed on carriers and users alike, whilst at the same time providing sufficient power for the regulator (OFTEL) to ensure fair, open and non-discrimatory competition.

3. In common with some earlier filings by AT&T before the FCC, there are a number of assertions made about the UK and its regulatory regime that are misleading and require clarification. Far from preventing access, as AT&T imply, the UK has welcomed foreign participation in its market. Since the White Paper, 69 licence applications have been received and 31 licences issued to companies to provide a broad variety of common carriage services ranging from local network provision to international services. This is in addition to cable TV licensing.

4. Many of the applicants and licensees are foreign companies who have been able to benefit from the open UK market to provide international services over leased lines and to build their own networks for common carriage within the UK as "Public Telecommunications Operators". Worldcom and ACC already have

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International Simple Resale (ISR) licences, while Telstra (Australia), Telia (Sweden), Sprint and AT&T themselves have applied for licences to provide services including ISR (Telstra and Sprint have been given draft licences on which public consultation periods have just ended). Many of these companies are already taking advantage of the freedom provided by the Telecommunications Services Licence to provide single end interconnected voice resale. Several of them also control, as dominant suppliers, facilities-based networks for domestic and international voice telphony in their home countries.

5. The US Regional Bell Operating Companies (RBOCs) have been particular active in developing cable television in the UK along with competition in local telephony. NYNEX, Southwestern Bell, US West and Bell Atlantic are major players in this market - a total investment in developing cable TV infrastructure of over £1 billion to date, a figure projected to rise to around £6 billion. There are now over 200,000 customers who take telphony through the cable TV companies, a number growing at around 15,000 per month. US West also have a 50% stake in the first Personal Communications Network operating in the UK, Mercury/ "One-2-One" which began operating in the London area in September 1993.

6. We have considered AT&T's PFRM in the context of this policy and market environment. AT&T have requested that the FCC should review "whether and to what extent affiliates of foreign firms should be permitted to participate in the US services market". The UK experience, examples of which are given above, has been that foreign companies subjected to the same regulatory approach as domestic companies have been a valuable source of competition and innovation, creating considerable investments in new technologies and consequent benefit to consumers. Major restrictions in inward investment of this sort in the US market in the name of bilateral reciprocity would tend to harm US consumers' interests.

7. We welcomed the "Regulation of International Common Carrier Services" (CC Docket No. 91-360, FCC 92-463 - 6 November 1992) which departed from the approach that carriers defined as foreign or under foreign control would be treated as dominant simply by virtue of their being foreign. We find many of AT&T's proposals regressive. The proposition that a 5% holding in a US carrier by a foreign entity should lead to the US company being defined an "affiliate" is more stringent than that contained in the 1985 FCC decision that a 15% holding by a foreign company lead to dominant treatment (International Competitive Carrier 102 FCC 2d 812 (1985)). It also seems to us an unrealistic assessment of the point at which there is "an incentive for discrimination". (PFRM page 7).

8. Dominant carrier treatment of foreign companies coupled with the restrictions on ownership contained in S.310 of the Communications Act remain, however, a significant barrier to entry into the US market. This is amply demonstrated by the fact that S.214 applications for non-US companies such as Cable and

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Wireless have been known to take as long as 4 years to process, and in some cases are still pending.

9. AT&T recognise the burdens that dominant carrier status places on a company - the problems are well set out in their own recent motion before the FCC for re-classification as a non-dominant carrier (Motion dated 22 September). The UK government would not welcome any change to the approach of the Regulation of International Common Carrier Services, which we look forward to seeing implemented in the near future. AT&T's PFRM, however, proposes a system that would considerably increase the existing burden and so limit competition and choice. We find that the filing requirements detailed on pages 4 and 5 of the proposed rule are particularly onerous, and that they sit uneasily with requests for lighter regulation in AT&T's motion for reclassification. In our view, it is not a carrier's foreignness, but its ability to discriminate against competitors which should be the criterion for regulation.

10. The rule would apparently apply only to foreign carriers taking a shareholding in US carriers. The reverse situation, in which a US carrier takes a shareholding in a foreign affiliate could also give rise to the same opportunities for anti-competitive activities, by allowing a US carrier to leverage its market power in the overseas market to the disadvantage of its competitors in the US market. Moreover US consumers would be disadvantaged in not having access to a fully competitive market for global network services of the sort which US carriers are seeking to provide in other markets through ownership or co-operation agreements (eg AT&T and Unitel or Worldpartners, Sprint with Call-Net and MCI with BT).

11. It is suggested that foreign carriers should be able to demonstrate "comparable competitive opportunities for US carriers" in all countries in which they or their affiliates operate before they would be able to operate any international common carrier service whether on their own facilities or over leased capacity. This goes far beyond the equivalency policy adopted by the US in its International Resale Order (and the similar policy of the UK) in respect of International Simple Resale (ISR). This policy, concentrates on finding that a country offers broadly equivalent opportunities to those in the home market to provide similar services. Thus the concept of equivalency does not cover reciprocity considerations in respect of multilateral market access. In the FONOROLA decision, the FCC found Canada equivalent without requiring a "mirror equivalence" of US regulation. Canada has foreign ownership restrictions on all carriers and a monopoly of international facilities. We also wonder how far AT&T's proposals will have the effect of opening other markets to US carriers, rather than depriving the US consumer of a fully competitive market for international services. Many companies will have little influence on policy in their own country and may have no influence at all over the regulatory framework of third countries in which they might also operate.

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12. AT&T recognise in their PFRM that were the FCC to act on their proposal, it could be interpreted "as a move by the US to close its own market" (page 42). They go on to say that the rules they propose "ultimately will become unnecessary," (footnote 55). We believe that they are unnecessary today. Promotion of fair competition among service providers is an essential means to produce benefits for consumers. It is, however, important to focus on competition as a means, not an end in itself. Demands for a precise "mirror equivalence" of regulatory approach between different countries will stifle competition not promote it.

13. We share the general goal of the liberalization of telecommunications markets. The UK has for instance been a driving force in the liberalisation of European markets, which are now beginning to open up. We have also supported the reduction of accounting rates which AT&T advocate (para 2c of the proposed rule). UK/US accounting rates have been reduced by about 40% since 1991 from $0.52/min to $0.31/min in 1993. In the UK at least, this has been reflected by lower prices for customers. BT's collection rate for UK/US calls has fallen 35% since 1991 from $3.05 to $1.97 for a 3 minute peak rate call. US standard prices have remained static in the same period eg AT&T's at $3.32 for a 3 minute peak rate call (Conversion rate £1=$1.5). These figures do not reflect the tariff increases which have recently been filed by US carriers.

Yours sincerely

Mark Hammond.

J M Hammond
First Secretary
Environment, Energy
and Telecommunications